

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:07-cr-0063-SEB-DML
)	
DUANE STURDIVANT,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On June 11, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on May 16, 2019. Defendant Sturdivant appeared in person with his appointed counsel, Dominic Martin. The government appeared by Nick Linder, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Troy Adamson.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Sturdivant of his rights and provided him with a copy of the petition. Defendant Sturdivant orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Sturdivant admitted violation number 1.
[Docket No. 254.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

1

“The defendant shall commit another federal, state or local crime.”

On March 12, 2019, Mr. Sturdivant was arrested on warrants out of Marion County, Indiana, in 49G12-1807-CM-023886 and 49G16-1807-CM-024363. In 49G12-1807-CM-023886, the offender was charged with criminal mischief, a misdemeanor. In 49G16-1807-CM-024363, the offender was charged with 4 counts of invasion of privacy-violation of a protective order, all misdemeanors. According to the probable cause affidavit in 49G12-1807-CM-023886, the offender broke the front window of the victim's residence after knocking at the door. When the police arrived he had left the scene. The victim of the offense was a former girlfriend and she wouldn't answer when he knocked. According to the probable cause affidavit in 49G16-1807-CM-0243632, the offender violated a protection order by sending the victim text and voice mails, Facebook messaging her mother, and sending an edible flower arrangement and note to the victim's school. On May 9, 2019, the offender plead guilty to one count of Invasion of Privacy in 49G16-1807-CM-024363, and was sentenced to 365 days in jail, suspended, and 359 days probation. All other counts were dismissed. The same date, Mr. Sturdivant plead guilty to one count of Criminal Mischief, in 49G16-1807-CM-023886, and was sentenced to 180 days in jail, suspended, time served and no probation.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is III.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 5 to 11 months' imprisonment.

5. The parties jointly recommended a modification to include participation in Moral Reconaton Therapy (MRT). Defendant is to have no contact with the victim in the underlying Marion County, Indiana state convictions.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be modified as follows:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.
14. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.

Justification: The offender has a history of drug use and addiction. This condition will assist the probation office in monitoring the offender's compliance to conditions of supervised release.

15. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.

Justification: The offender has a history of drug use and addiction. This condition will assist the probation office in monitoring the offender's compliance to conditions of supervised release.

16. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.

Justification: The offender has a history of drug use and addiction. This condition will assist the probation office in monitoring the offender's compliance to conditions of supervised release.

17. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.

Justification: The offender has a history of drug use and addiction. This condition will assist the probation office in monitoring the offender's compliance to conditions of supervised release.

18. You shall participate in a cognitive behavioral program, such as Moral Reconation Therapy (MRT), at the direction of the probation officer and abide by the rules of the program.

Justification: The offender has a history of making some poor decisions related to both drug use and in domestic relationships. This condition will assist the offender to hopefully learn some new ways of dealing with relational conflict resolution and poor impulse control in using substances.

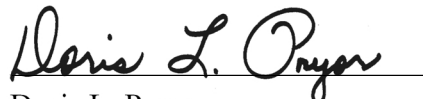
19. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to search.

Justification: The offender has a history of drug use and addiction. This condition will assist the probation office in monitoring the offender's compliance to conditions of supervised release.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 6/28/2019


Doris L. Pryor
United States Magistrate Judge
Southern District of Indiana

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